

LIVINGSTON EMPLOYER BREEZE

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VIOLENCE IN THE WORKPLACE **MONTANA SAFETY CULTURE ACT AND THE** **EMPLOYER'S ROLE**

Who's responsibility is it anyway?

By Robert Kincaid and Jerri Miller

Violence in the workplace was epidemic in America before 9/11. Each year employers report 2,000,000 assaults in the workplace (it is estimated that five assaults occur for every one reported); nearly half a million of these are seriously injured; 51,000 are reported raped or otherwise sexually assaulted (it is estimated that ten sexual assaults occur for every one reported); 1,000 are murdered, according to the Bureau of Labor Statistics. Additionally, each day thousands of employees are harassed, intimidated, threatened and verbally abused. Workplace homicide was already the number one killer of women in the workplace.

These staggering figures should not be an accepted cost of doing business in our society—nor should death or injury be an inevitable result of one's chosen occupation. Violence is a substantial contributor to occupational injury and death, and homicide has become the second leading cause of occupational injury death. Nonfatal assaults result in millions of lost workdays and cost workers millions of dollars in lost wages.

The Montana Safety Culture Act enacted by the 1993 Montana State Legislature encourages workers and employers to come together to create and implement a workplace safety philosophy. It is the intent of the act to raise workplace safety to a preeminent position in the minds of all Montana's workers and employers. Therefore, it is the responsibility and duty of employers to participate in the development and implementation of safety programs that will meet the specific needs of their workplace; thereby establishing a safety culture that will help create a safe work environment for all future generations of Montanans.

Workplace violence is clustered in certain occupational settings: For example, the retail trade and service industries account for more than half of workplace homicides and 85% of nonfatal workplace assaults. Taxicab drivers have the highest risk of workplace homicides of any occupational group. Workers in health care, community services, and retail settings are at increased risk of nonfatal assaults.

Risk factors for workplace violence include dealing with the public, the exchange of money and the delivery of services or goods. Prevention strategies for minimizing the risk of workplace violence include (but are not limited to) cash-handling policies, physical separation of workers from

customers, good lighting, security devices, escort services and employee training.

A workplace violence prevention program should include a system for documenting incidents, procedures to be taken in the event of incidents and open communication between employers and workers. Although no definitive prevention strategy is appropriate for all workplaces, all workers and employers should assess the risks for violence in their workplaces and take appropriate action to reduce those risks.

In Montana, we all seem to believe that we are exempt from this type of violence, and for all intents and purposes, we probably are. However, prevention and preparation are still the best deterrents there are.

Our main concern continues to be violence from within the business or office itself. As a business owner, you need an anti-violence policy in your employee handbook. And, it needs to be kept up-to-date. You also need to make sure your employees know the policy and are aware of any consequences they may face should they violate it.

As a supervisor or a co-worker, you must take the responsibility to report any perceived threats of violence—pushing, shoving, name calling, cursing, etc. Watch for erratic behavior, drastic changes in dress and/or attitude, depression, signs of money or domestic problems and disagreements between co-workers. If there is a problem, deal with it immediately. Nobody ever wants to do this, but call the Police if you feel the threat is specific and imminent.

We have a "zero tolerance" rule in our office. This means that if someone makes a threat, either personal or against the agency, we call 911. We also do not take verbal abuse from clients, either in person or over the phone. Weapons are not allowed in our building. Each phone within the office has 911 programmed into it so we only need to press one button. We also have panic buttons and codes to use to warn other employees of danger. And, we make sure that no one is alone in the office when it is open.

If you would like more information on establishing a Workplace Violence Prevention Policy or to schedule an informational training session contact Bob Kincaid at 222-8905 or Jerri Miller at 222-8901.

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EMPLOYMENT LAW QUESTIONS

By Jerri Miller

Our staff frequently get asked by both employers and employees when a person has to be paid if they are terminated from their employment. This is a very touchy topic, and very few people are ever happy with the answer.

Sections 39-3-203 thru 205 of the Montana Codes Annotated (MCA) is pretty specific.

Basically, the employer is required by law to establish a pay period and a pay day and to stick with it. If the employee quits, you must pay them within 15 business days after the wages are due and payable or the next regularly scheduled payday, whichever comes first. You may not withhold deductions other than the legally established ones—taxes, etc., and previously agreed upon items such as insurance premiums and where applicable, room, board and certain other incidentals.

However, if the employee is terminated for cause by you, all unpaid wages are due and payable immediately upon the separation unless you have a **written** personnel policy that specifies payment of final wages to be the next regular pay day or 15 days from the separation, whichever occurs first.

If the employee is discharged by reason of an allegation of theft of property or funds connected to the employment, the employer may withhold an amount sufficient to cover the value of the theft if the employee agrees to it in writing or the employer files a report of the theft with local law enforcement within 7 days. If no charges are filed within 15 days of the employer filing a report, all the wages are due and payable upon the expiration of the 15 day period.

If you terminate an employee, **WE SUGGEST THAT YOU PAY THE EMPLOYEE IMMEDIATELY.** Have that final paycheck in your hand when you tell the employee. Don't give them a reason to come back to the workplace. That check in hand can go a long way toward blunting the anger that goes along with discharge.

Need a policy for terminations, please let us know. We will be glad to help you write one that is legal and right for your business.

DRUG TESTING

By Jerri Miller

This is another one of those volatile and very misunderstood laws in our state. To know what to do in Montana, you have to know what is required under federal law. This is definitely not a "one law fits all". Each individual classification of employees has to be examined to determine if you can legally test those folks.

Employers may not just make a decision that they want to drug and/or alcohol test their employees. The law requires an established testing program to be set up.

Because there is so much wrong information in the employment community, we are including a copy of the State of Montana Code Annotated (MCA) which governs how a program is established and what the employer may and may not

do to be legal. We suggest that you seek legal assistance from your attorney. Although we cannot write a testing program for you, we do have access to many templates and can help you download them into a word processing format so you don't have to start from scratch.

NEW FACE AT JOB SERVICE

We have a new person on our Front Desk!



Jean Modesette started employment with the Livingston Job Service on July 3, 2006, after moving permanently to Paradise Valley from Belgrade. She was previously employed as a staff assistant for a non-profit organization, Property and Environment Research Center, located in Bozeman. Jean and her husband, Mark,

have 2 horses, 2 cats, and 4 llamas and she hopes to add more animals to the list in the future! Jean has a great smile and friendly manner about her, and we know everyone will like her immensely!

CUSTOMER SATISFACTION (OR NOT)

By Elizabeth Anderson

I came across an article recently that reminded me about providing excellent customer service and the results of poor customer service.

In doing a web search on Customer Dissatisfaction, I came up with **3,940,000** results. That's a pretty good indication there is a lot of customer dissatisfaction with services today, hence the number of articles on how to correct it. "Nothing is more powerful than words. Individuals, families, teams, companies, and nations are built up or brought down by words", says Dr. Zimmerman, a motivational speaker. And what you say to your customer, especially if they are unhappy, angry or complaining can make or break your business. Likewise, what the customer tells others about your business can also make or break it. Here are some statistics regarding poor customer service.

- Customers who are only somewhat satisfied are 10-20% less likely to make a repeat purchase than customers who are very satisfied.
- Customers who experience mild dissatisfaction tell on average, 9 other people.
- Customers who experience stronger dissatisfaction tell on average, 16 other people.
- Only 4% of customers who experience a small problem will make their experience known to senior management of the vendor organization.

In research covering over 30 industries, TARP (Technical Assistance Research Programs) found that companies spend on average, 3-5 times more to replace a dissatisfied customer than to keep a current customer. (And this figure is even higher in big-ticket products and business-to-business sales!)

So, what do you do to keep customers satisfied and happy?
Train and mentor your staff!

Don't assume that everyone you hire is going to know how to deal with a dissatisfied or angry customer, especially if they are just entering the workforce or are in a first-time position of having to provide customer service. Here are a few tips:

Be genuine, sincere, and honest with the customer, whether it's in the normal day-to-day transactions or when dealing with an unhappy customer. An example is a waiter/waitress position. Two co-workers and I used to go to Helena for training every month. We would always eat at Perkins and would request to be seated in a particular waiter's section. He was genuine and glad to see us "old ladies" every time. The last time we were at the restaurant, he was there just visiting friends (he was starting an apprenticeship as a pipefitter & had quit the restaurant) and when he saw us, he sat down at our table while we ate dinner and visited with us. This was an 18 year old kid who did everything right. We wanted to clone him for every restaurant. We never felt that level of service at any other restaurants because we knew it was for a bigger tip and not genuine.

If you work in a business where you get repeat customers, get to know them. Maybe you won't get to know their name, (although that is preferred) but at least get to know their preferences. I go to the movies (summer/winter matinees with my kids) and I always order the same thing. One of the clerks behind the counter knows what I order—I'm impressed with her and feel like I am getting good customer service just because of that personal recognition. What can you do to impress your repeat customers? Sometimes just calling them by name is enough, but if you work in a service industry or convenience store and they buy coffee every morning, maybe you could give them a free cup of coffee once in a while. Throw in some little perk for them that makes them feel good and shows that they are appreciated for being your customer.

Get to know your customers and what they want/need. Say you work in a bike shop and someone comes in and wants to buy a street racing 10-speed. But when you are talking with the customer and you find out they are planning on using it for a mountain trek, you can then tell them which bike would really be the best for what they are planning. You will have a much more appreciative customer because they didn't throw their money away on something they really can't use. If you don't get to know your customer, you won't have the option of giving them what they want or need right now, and you also may not have the opportunity to get their repeat business.

If a customer is irate, don't take their complaint personally—they usually are just blowing off steam and need someone to listen to them and give their complaint validity. Listen without interruption; show you are sorry and find out what you can do to make it right. Provide your name and number so they can

contact you should there be additional questions, and check back with the customer to make sure the solution has been satisfactory.

There are a number of things that can be done that will increase your customer's satisfaction with your business and products. Don't be afraid to ask them what you could do better. Don't be afraid to show your appreciation for them. Without "them" you wouldn't have a business!

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C	P	I	N	O	W	M	U	Z	R	O	T
D	R	S	M	I	P	E	R	K	S	P	S
E	O	S	L	T	E	N	T	A	O	Q	R
F	V	A	K	C	S	T	S	C	N	R	Q
G	I	T	J	A	A	O	R	O	A	S	P
H	D	I	I	F	H	R	Q	M	L	T	O
I	E	S	H	S	C	Z	P	P	R	U	N
S	E	F	G	I	R	A	O	L	E	V	M
U	X	A	F	T	U	B	N	A	C	W	L
C	C	C	H	A	P	P	Y	I	O	X	K
O	E	T	E	S	T	C	M	N	G	Y	J
F	L	I	I	R	A	T	E	T	N	Z	I
R	L	O	D	E	E	D	L	B	I	E	H
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M	N	O	B	O	E	F	R	D	I	E	F
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C	K	T	W	P	S	J	N	H	K	E	A
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APPRECIATION
 CUSTOMER FOCUS
 SERVICE
 MENTOR
 ASK THEM
 TRAINING
 HAPPY
 COMPLAINT

CUSTOMER SATISFACTION
 PERKS
 DISSATISFACTION
 BE SINCERE
 PERSONAL RECOGNITION
 PROVIDE EXCELLENCE
 REPEAT PURCHASE
 IRATE

UPCOMING WORKSHOPS

Wednesday, September 20, 2006—8:30 AM – 4:30 PM

Jim Nys will present Part II of Montana Employer Rights And Responsibilities: **Writing and Administering Effective Personnel Policies.**

This workshop is designed as an intermediate level training for those with human resource management responsibilities who need to learn about Montana and Federal laws, rules and regulations as they apply to personnel policies and what employers need to do to be in compliance with those rules.

To Register Contact: Nancy Axtell or Dexter Wester at 406-582-9200, Jerri Miller at 406-222-8901 or Jim Nys At 406-443-7787. Cost is \$50/Person—CEU's Pending

Tuesday, October 17th! Mike Boyett, Corporate Security Officer for First Interstate Bank, and Detective Michelle Morris, Livingston City Police Department will present a 1/2 day workshop on **Recognizing and Avoiding Identity Theft.**

Some of the common ways ID theft happens:

- ♦ Thieves dumpster dive looking for bills/paper with your personal information on it.
- ♦ Credit/debit card numbers are stolen while your card is being processed at a store.
- ♦ “Phishing” by sending spam or pop-ups to get you to reveal your personal information.
- ♦ Divert your billing statements to another location by completing a “change of address” form.

- ♦ Just plain stealing—wallets & purses, pre-approved credit card offers, new checks, personnel records, etc.

This workshop is being offered to you at no charge.

However, pre-registration is required to ensure seating and materials for everyone. The information will be presented twice, from 9 am to noon and from 1 pm to 4 pm at First Interstate Bank, Livingston. You can register by calling the Livingston Job Service office at 222-0520. Hurry! Space is limited!

CURRENT STATISTICS, July 2006

		<u>U.S.</u>	<u>Montana</u>	
Unemployment Rate		5.0%	3.2%	
<u>AREA</u>	<u>Labor Force</u>	<u>Emp</u>	<u>Un-emp</u>	<u>%</u>
Gallatin	51,393	50,371	1,022	2.0%
Park	10,320	10,065	255	2.5%
Meagher	1,022	994	28	2.7%
Sweet Grass**	3,321	3,280	41	1.2%

**Sweet Grass continues to have the lowest unemployment rate in the state! Congratulations, again!

FREE POSTERS, FREE POSTERS, FREE POSTERS!!
Don't pay your good money for them! Your Livingston Job Service Workforce Center will provide them FREE!
Just call us at 222-0520. The latest scam is an “Employees must wash their hands” poster. This is bogus! Call us if you get a notice or if you have questions!

39-2-205. Short title. Sections 39-2-205 through 39-2-211 may be cited as the "**Workforce Drug and Alcohol Testing Act**".

39-2-206. Definitions. As used in 39-2-205 through 39-2-211, the following definitions apply:

- (1) "**Alcohol**" means an intoxicating agent in alcoholic beverages, ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (2) "**Alcohol concentration**" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath, as indicated by an evidential breath test.
- (3) "**Controlled substance**" means a dangerous drug, as defined in 49 CFR, part 40, except a drug used pursuant to a valid prescription or as authorized by law.
- (4) "**Employee**" means an individual engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position for an employer and does not include an independent contractor. The term includes an elected official.
- (5) "**Employer**" means a person or entity that has one or more employees and that is located in or doing business in Montana.
- (6) "**Hazardous work environment**" includes but is not limited to positions:
 - (a) for which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;
 - (b) that involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or
 - (c) that involve handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.
- (7) "**Medical review officer**" means a licensed physician trained in the field of substance abuse.
- (8) "Prospective employee" means an individual who has made a written or oral application to an employer to become an employee.
- (9) "**Qualified testing program**" means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in 39-2-207 and 39-2-208.
- (10) "**Sample**" means a urine specimen to determine the presence of a controlled substance or a breath alcohol test to determine the presence of alcohol.

39-2-207. Qualified testing program. A qualified testing program must comply with the following criteria:

- (1) Testing must be conducted according to the terms of written policies and procedures that must be adopted by the employer and must be available for review by all employees 60 days before the terms are implemented or changed. Controlled substance and alcohol testing procedures must conform to 49 CFR, part 40. At a minimum, the policies and procedures must require:
 - (a) a description of the applicable legal sanctions under federal, state, and local law for the unlawful manufacture, distribution, possession, or use of a controlled substance;
 - (b) the employer's program for regularly educating or providing information to employees on the health and workplace safety risks associated with the use of controlled substances and alcohol;
 - (c) the employer's standards of conduct that regulate the use of controlled substances and alcohol by employees;
 - (d) a description of available employee assistance programs, including drug and alcohol counseling, treatment, or rehabilitation programs that are available to employees;
 - (e) a description of the sanctions that the employer may impose on an employee if the employee is found to have violated the standards of conduct referred to in subsection (1)(c) or if the employee is found to test positive for the presence of a controlled substance or alcohol;
 - (f) identification of the types of controlled substance and alcohol tests to be used from the types of tests listed in 39-2-208;
 - (g) a list of controlled substances for which the employer intends to test and a stated alcohol concentration level above which a tested employee must be sanctioned;
 - (h) a description of the employer's hiring policy with respect to prospective employees who test positive;
 - (i) a detailed description of the procedures that will be followed to conduct the testing program, including the resolution of a dispute concerning test results;
 - (j) a provision that all information, interviews, reports, statements, memoranda, and test results are confidential communications that may not be disclosed to anyone except:
 - (i) the tested employee;
 - (ii) the designated representative of the employer; or
 - (iii) in connection with any legal or administrative claim arising out of the employer's implementation of 39-2-205 through 39-2-211 or in response to inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500, when there is reason to believe that the tested employee may have caused or contributed to the accident; and
 - (k) a provision that information obtained through testing that is unrelated to the use of a controlled substance or alcohol must be held in strict confidentiality by the medical review officer and may not be released to the employer.
- (2) In addition to imposing appropriate sanctions on an employee for violation of the employer's standards of conduct, an employer may require an employee who tests positive on a test for controlled substances or alcohol to participate in an appropriate drug or alcohol counseling, treatment, or rehabilitation program as a condition of continued employment. An employer may require the employee to submit to periodic followup testing as a condition of the counseling, treatment, or rehabilitation program.

- (3) Testing must be at the employer's expense, and all employees must be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.
- (4) The collection, transport, and confirmation testing of urine samples must be performed in accordance with 49 CFR, part 40.
- (5) Before an employer may take any action based on a positive test result, the employer shall have the results reviewed and certified by a medical review officer who is trained in the field of substance abuse. An employee or prospective employee must be given the opportunity to provide notification to the medical review officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs.
- (6) Breath alcohol tests must be administered by a certified breath alcohol technician and may only be conducted using testing equipment that appears on the list of conforming products published in the Federal Register.
- (7) A breath alcohol test result must indicate an alcohol concentration of greater than 0.04 for a person to be considered as having alcohol in the person's body.

39-2-208. Qualified testing program -- allowable types -- procedures. Each of the following activities is permissible in the implementation of a qualified testing program:

- (1) An employer may test any prospective employee as a condition of hire.
- (2) An employer may use random testing if the employer's controlled substance and alcohol policy includes one or both of the following procedures:
 - (a) An employer or an employer's representative may establish a date when all salaried and wage-earning employees will be required to undergo controlled substance or alcohol tests, or both.
 - (b) An employer may manage or contract with a third party to establish and administer a random testing process that must include:
 - (i) an established calendar period for testing;
 - (ii) an established testing rate within the calendar period;
 - (iii) a random selection process that will determine who will be tested on any given date during the calendar period for testing;
 - (iv) all supervisory and managerial employees in the random selection and testing process; and
 - (v) a procedure that requires the employer to obtain a signed statement from each employee that confirms that the employee has received a written description of the random selection process and that requires the employer to maintain the statement in the employee's personnel file. The selection of employees in a random testing procedure must be made by a scientifically valid method, such as a random number table or a computer-based random number generator table.
- (3) An employer may require an employee to submit to followup tests if the employee has had a verified positive test for a controlled substance or for alcohol. The followup tests must be described in the employer's controlled substance and alcohol policy and may be conducted for up to 1 year from the time that the employer first requires a followup test.
- (4) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to suspect that an employee's faculties are impaired on the job as a result of the use of a controlled substance or alcohol consumption. An employer shall comply with the supervisory training requirement in 49 CFR, part 382.603, whenever the employer requires a test on the basis of reasonable suspicion.
- (5) An employer may require an employee to be tested for controlled substances or alcohol if the employer has reason to believe that the employee's act or failure to act is a direct or proximate cause of a work-related accident that has caused death or personal injury or property damage in excess of \$1,500.

39-2-209. Employee's right of rebuttal. The employer shall provide an employee who has been tested under any qualified testing program described in 39-2-208 with a copy of the test report. The employer is also required to obtain, at the employee's request, an additional test of the urine split sample by an independent laboratory selected by the person tested. The employer shall pay for the additional tests if the additional test results are negative, and the employee shall pay for the additional tests if the additional test results are positive. The employee must be provided the opportunity to rebut or explain the results of any test.

39-2-210. Limitation on adverse action. No adverse action, including followup testing, may be taken by the employer if the employee presents a reasonable explanation or medical opinion indicating that the original test results were not caused by illegal use of controlled substances or by alcohol consumption. If the employee presents a reasonable explanation or medical opinion, the test results must be removed from the employee's record and destroyed.

39-2-211. Confidentiality of results. (1) Except as provided in subsection (2) and except for information that is required by law to be reported to a state or federal licensing authority, all information, interviews, reports, statements, memoranda, or test results received by an employer through a qualified testing program are confidential communications and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding.

- (2) Material that is confidential under subsection (1) may be used in a proceeding related to:
 - (a) legal action arising out of an employer's implementation of 39-2-205 through 39-2-211; or
 - (b) inquiries relating to a workplace accident involving death, physical injury, or property damage in excess of \$1,500 when there is reason to believe that the tested employee may have caused or contributed to the accident.